

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**CRIMINAL CASE NO. E026 OF 2025**

**VERSUS**

**REPUBLIC.....PROSECUTION  
COUNSEL**

**VERSUS**

**LOYCE AKINYI OKONG'O.....  
ACCUSED**

**RULING**

1. The accused person herein **Loyce Akinyi Okong'o** is in charged with the offence of murder contrary to *Section 203* as read with *Section 204* of the *Penal Code, Cap 63 Laws of Kenya*.
2. The accused person pleaded not guilty to the charge.
3. The prosecution opposes the release on bond of the accused person and to that end the investigating officer **Inspector of Police Geoffrey Tegei** filed an affidavit that he swore on 23<sup>rd</sup> September, 2025.
4. In his affidavit, **Inspector Tegei** states on oath that there are compelling reasons to deny the accused person bond. He states that on 10<sup>th</sup> July, 2025, the accused person, immediately after committing the alleged offence boarded a bus for Nairobi where she went into hiding. The officer alleges that the accused person switched off her phone and was only apprehended on 27<sup>th</sup> or 28<sup>th</sup> August, 2025 and that

her conduct shows that she is a flight risk and that if released, she may not turn up for trial.

5. The second ground upon which the prosecution, through the investigating officer, opposes the accused person's release on bond is that she may interfere with the civilian witnesses as most are known to her and are her relatives. The officer does not give further explanation on this ground.
6. The third ground proffered by the officer is that the offence that the accused person is faced with is serious in nature as it carries a severe sentence, which may be an incentive for her to abscond.
7. The accused person filed an affidavit that she swore on 24<sup>th</sup> October, 2025 through which she states that the prosecution has not presented reasons that are sufficient to amount to compelling grounds to warrant the denial of bond.
8. In her affidavit, the accused person states that the allegations that she is a flight risk or that she may interfere with witnesses are baseless, speculative and unsupported by evidence.
9. The accused person states that she has fully cooperated with the investigators since her arrest and that she is willing to abide with any conditions that this court may attach to her bond, including periodically reporting to the police,

refraining from contacting witnesses and disclosing her place of abode to the investigating officer.

10. From the record, affidavits and submissions placed before this Court, the primary issues for determination are, first, whether the prosecution has demonstrated the existence of compelling reasons within the meaning of *Article 49(1)(h)* of the *Constitution* to warrant the denial of bond to the accused person; second, whether the allegations that the accused person is a flight risk are supported by cogent and credible evidence; third, whether there is a real likelihood that the accused person, if released on bond, will interfere with prosecution witnesses; and fourth, whether the seriousness of the offence and the severity of the sentence prescribed by law, taken alone or cumulatively with other factors, constitute sufficient grounds to deny the accused person her constitutional right to bail.
11. *Article 49(1)(h)* of the *Constitution* guarantees the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released. This provision marks a deliberate constitutional shift from the pre-2010 position, particularly in respect of capital offences, by establishing bail as a right rather than a privilege.
12. The burden therefore rests squarely upon the prosecution to demonstrate, through evidence, the existence of compelling reasons that justify limitation of this right. Mere

allegations, conjecture or generalized fears do not suffice. The reasons advanced must be specific, persuasive and supported by material placed before the Court.

13. In the case of ***Republic v Danson Mgunya & Another [2010] eKLR***, the Court held that bail is a constitutional right and that the burden of proof lies on the prosecution to demonstrate the existence of compelling reasons.
14. In ***Republic v Joktan Mayende & 3 Others [2012] eKLR***, the Court reiterated that once an accused person seeks bail, it is incumbent upon the prosecution to place before the Court sufficient material to justify denial of that right. The Court emphasized that compelling reasons are an exception to the rule and that the State, being the party seeking to curtail a fundamental right, must justify such limitation.
15. The reasoning in the two authorities accords with *Article 24* of the *Constitution*, which requires any limitation of a right to be reasonable and justifiable in an open and democratic society.
16. What is the standard applicable in proving a compelling reason? The answer to this question is to be found in the case of ***Republic v Ahmed Mohammed Omar & 6 Others [2010] eKLR***, where the High Court elaborated that the prosecution must present credible evidence showing that the release of the accused would prejudice the

administration of justice. The Court rejected generalized allegations and held that the evidence must be sufficient to persuade the court, on a balance of probabilities, that the identified risk is real and not imaginary.

17. The first ground relied upon by the prosecution is that the accused person is a flight risk. The investigating officer avers that immediately after the alleged commission of the offence, the accused person travelled to Nairobi, switched off her phone and was only apprehended several weeks later, conduct which, according to the officer, demonstrates a likelihood that she may abscond if released on bond.

18. While the Court appreciates that conduct before arrest may be relevant in assessing the risk of absconding, such conduct must be examined in its proper context. The Court notes that the accused person has deponed, without contradiction, that since her arrest she has co-operated fully with the investigating authorities. There is no evidence before the Court that she has otherwise conducted herself in a manner suggestive of a present intention to abscond.

19. The assessment of flight risk must be forward-looking and grounded in present realities rather than solely on speculative interpretations of past conduct. On the material placed before the Court, the allegation that the accused person is a flight risk remains unsubstantiated and falls short of the threshold of a compelling reason under *Article 49*.

20. The second ground advanced by the prosecution is the likelihood of interference with civilian witnesses, on the basis that most of them are relatives or persons known to the accused person.

21. Interference with witnesses is, without doubt, a legitimate and weighty consideration in bail determinations. However, the law requires more than a bare assertion of such a risk. The prosecution must demonstrate, by affidavit evidence or otherwise, either past attempts at interference, threats made to witnesses or particular circumstances showing a real and imminent danger of such interference occurring.

22. In the present case, the investigating officer does not identify any witness who has been threatened, intimidated or approached by the accused person, nor does he outline the manner in which such interference is likely to occur.

23. The Court notes that familial or social proximity between an accused person and witnesses, standing alone, is insufficient to constitute a compelling reason to deny bond. Such proximity is common in many criminal cases arising from domestic or community settings.

24. The accused person has further undertaken to abide by strict bond conditions, including refraining from contacting witnesses and submitting to periodic reporting. In the absence of concrete evidence of interference or attempted

interference, the Court finds that this ground remains speculative and does not meet the constitutional standard required to limit the accused person's right to liberty.

25. The third ground relied upon by the prosecution is the seriousness of the offence and the severity of the sentence prescribed under *Sections 203 and 204 of the Penal Code*. There is no dispute that murder is a grave offence carrying severe penal consequences. However, *Article 49* does not exclude any offence from the right to bail and seriousness of the charge, solely by itself, is not a compelling reason.

26. If severity of sentence were sufficient on its own, the constitutional guarantee would be rendered illusory for persons charged with serious offences. The seriousness of the offence may only be considered alongside other factors, such as demonstrated flight risk or interference with witnesses, which, as already noted, have not been sufficiently established in this case.

27. In balancing the rights of the accused person against the interests of justice, the Court is guided by the principle that pre-trial detention should be the exception rather than the rule. The presumption of innocence remains intact until proven otherwise and bail conditions exist precisely to mitigate identified risks while preserving the accused person's liberty.

28. The accused person's willingness to comply with stringent conditions, including disclosure of her place of abode, regular reporting to the police and non-contact with witnesses, provides the Court with practical mechanisms to address the concerns raised by the prosecution without resorting to outright denial of bond.
29. In the totality of the circumstances and upon careful consideration of the affidavits filed by both parties, the Court finds that the prosecution has failed to discharge its constitutional burden of demonstrating compelling reasons to deny the accused person bond. The allegations of flight risk and possible interference with witnesses are not supported by sufficient evidence and the seriousness of the offence, though acknowledged, cannot on its own justify the curtailment of the accused person's right under *Article 49(1)(h)*.
30. Consequently, the Court determines that the accused person is entitled to be released on bond on reasonable conditions designed to secure her attendance at trial and safeguard the integrity of the proceedings.
31. In the result, the accused person may be released on a bond of Ksh.800,000/- with one surety of similar amount. In addition thereto, the accused person shall not, during the pendency of this trial contact any of the witnesses, save for the investigating officer. Further, before her release, the accused person and/or her surety shall disclose to the investigating officer her permanent abode. Any future changes to the accused person's place of abode or residence

shall accordingly be communicated to the investigating officer.

DELIVERED, SIGNED & DATED THIS 15<sup>th</sup> day of December,  
2025

**JOE M. OMIDO**  
**JUDGE**

APPELLANT: Present.

FOR THE APPELLANT: **Ms. Okoth Oluoch.**

FOR RESPONDENT: **Ms. Muema.**

COURT ASSISTANT: **Mr. Ngoge.**

**Ms. Muema:** We will call 20 witnesses. We have supplied the documents.

**Mr. Okoth:** We can take a hearing date.

**Court:** Hearing on 22<sup>nd</sup> & 23<sup>rd</sup> June, 2026.

**JOE M. OMIDO**  
**JUDGE**